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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 14.09.2021

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THE HON'BLE MR.JUSTICE M.S.RAMESH

W.P.NO.25888 OF 2011

AND

M.P.NO.1 OF 2011

R.Kaliammal

..Petitioner

Vs

1. The Assistant Provident Fund  
Commissioner and Recovery Officer,  
Employees Provident Fund Organisation,  
Sri Jayalakshmi Plaza,  
Swarnapuri,  
Salem-636004.
2. The Enforcement Officer,  
Employees Provident Fund Organisation,  
District Office, Erode,  
9, Gandhiji Road,  
TNHB Complex 1<sup>st</sup> Floor,  
Erode-636001.
3. M.Shanmugam,  
Proprietor,  
M/s. Kamatchi Packing Factory,  
Suriampalayam,  
Bhavani-638316,  
Erode District.

..Respondents

(WP was dismissed as against R3 vide  
order of this Court dated 05.03.2020)

Prayer: Writ Petition is filed under Article 226 of Constitution of India for writ of certiorari, calling for the records relating to the impugned order of Attachment of Immovable Property in the proceedings TN/PF/5570/Recovery/2011 dated 18.07.2011 and the consequential notice for Selling sale proclamation made in the Proceedings TN/SLM/EPF/5570/RECY/RRC-265/2011 dated 28.09.2011 passed by the 1<sup>st</sup> respondent herein, quash the same.



For Petitioner : Mr.N.Manokaran

For Respondent No.1 & 2 : Mr.M.Palanimuthu

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O R D E R

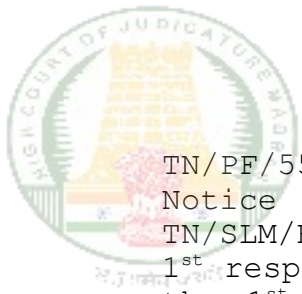
For the period from January'2001 to November 2002, it is claimed that the Employees Provident Fund contributions from the staff workers of M/s. Kamatchi Packing Factory, Suriyampalayam, Bhavani was defaulted. Accordingly, a show cause notice dated 01.08.2003 was issued to the 3<sup>rd</sup> respondent namely Mr. M. Shanmugam, Proprietor Kamatchi Packing Factory. Consequently, an order of attachment of the immovable properties of the petitioner was made on 18.07.2011 and a sale proclamation was also made on 28.09.2011. Challenging the same, the present writ petition has filed.

2. According to the learned counsel for the petitioner, though the 3<sup>rd</sup> respondent, who is the proprietor of "M/s.Kamatchi Packing Factory," is the defaulter, the respondent-corporation has chosen to proceed against the properties of the petitioner, who is the managing partner of "M/s.Kamatchi Textiles" and therefore, the respondents have no authority to order attachment of the petitioner's property.

3. Per contra, Mr.Palanimuthu, learned standing counsel appearing for the respondent organisation submitted that the petitioner, as well as the 3<sup>rd</sup> respondent herein, have an agreement in the conduct of their businesses and therefore, the order of attachment and its consequential sale proclamation was rightly done.

4. This Court is not in agreement with the stand taken by the respondent organisation. When admittedly the 3<sup>rd</sup> respondent is a proprietary concern and the show cause notice, claiming the arrears of the contributions was also sent to such a proprietor, there is absolutely no justification to proceed against the properties belonging to the petitioner, who has no role in the default committed by 'M/s. Kamatchi Packing Factory'. The respondents 1 & 2 have not established as to how the petitioner is involved in the business of the 3<sup>rd</sup> respondent. Taking into account that the 3<sup>rd</sup> respondent is only a proprietor and that the show cause notice was also issued to him, the consequential order of attachment or sale proclamation made against the properties of the petitioner, cannot be sustained.

5. In the light of the above observations, the impugned order of Attachment of Immovable Property in the proceedings



TN/PF/5570/Recovery/2011 dated 18.08.2011 and the consequential Notice for selling sale proclamation made in the proceedings TN/SLM/EPF/5570/RECY/RRC-265/2011 dated 28.09.2011 passed by the 1<sup>st</sup> respondent is quashed. However, liberty is hereby granted to the 1<sup>st</sup> & 2<sup>nd</sup> respondents herein to recover the arrears of the employees provident fund contribution from the 3<sup>rd</sup> respondent, in accordance with the procedures prescribed under the Employees Provident Fund Miscellaneous Provisions Act.

6. With the above, the writ petition is ordered accordingly. No costs. Consequently, connected Miscellaneous Petition is closed.

Sd/-  
Assistant Registrar(CS II)

//True Copy//

Sub Assistant Registrar

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To

1. The Assistant Provident Fund  
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Swarnapuri,  
Salem-636004.
2. The Enforcement Officer,  
Employees Provident Fund Organisation,  
District Office, Erode,  
9, Gandhiji Road,  
TNHB Complex 1<sup>st</sup> Floor,  
Erode-636001.

+1cc to Mr.N.Manokaran, Advocate, S.R.No.46948

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BS (CO)  
PM/13/10/2021